

REMARKS

Favorable reconsideration of this application is requested in view of the following remarks.

Applicants appreciate the Examiner's courtesy of having the interview over the phone on April 16, 2009, and the following remarks reflect the discussion of the interview.

Claim 1 has been amended to include the limitations of claim 2 and a definition of the low refractive index layer as supported by the specification at page 12, lines 4-13 and 16-29 and page 13, lines 13-20. Accordingly, claim 2 has been canceled without prejudice, and claim 3 has been amended editorially.

Claims 1-7 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Applicants respectfully traverse this rejection.

Claim 1 requires that the refractive index of the low refractive index layer be lower than that of the transmittance adjusting layer.

Claim 1 further requires that the relationship between the refractive index of the low refractive index layer (n_1) and that of the first optical separating layer (n_4) be

$$|n_1 - n_4| \leq 0.5.$$

Applicants believe that the above requirements provide a suitable characterization of the low refractive index layer, and this rejection should be withdrawn.

Claims 1-7 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Nishihara et al. (U.S. Patent Application Publication No. 2002/0054983) (Nishihara I) as evidenced by Nishihara et al. (U.S. Patent Application Publication No. 2004/0105182) (Nishihara II). Applicants respectfully traverse this rejection.

Nishihara I discloses a transmittance adjusting layer (10), which is formed between a first uppermost interface layer (9) and an optically separating layer (21), i.e.,

an optical separating layer (see Figs. 2 and 3). Thus, Nishihara I fails to disclose the low refractive index layer that is provided between the transmittance adjusting layer and the optical separating layer as claim 1 requires. In addition, Nishihara I fails to disclose the low refractive index layer having a lower refractive index than that of the transmittance adjusting layer and the low refractive index layer whose refractive index satisfies the relationship of $|n_1 - n_4| \leq 0.5$ with that of the optical separating layer as claim 1 requires. By including the low refractive index layer having a lower refractive index than that of the transmittance adjusting layer between and in contact with the transmittance adjusting layer and the optical separating layer, the low refractive index layer can prevent moisture contained in the optical separating layer from affecting formation of the transmittance adjusting layer, which is very sensitive to the moisture content in the atmosphere, and varying the film-forming rate thereof (see page 12, lines 16-29 of the specification).

Nishihara I further discloses protective layers, which include oxides containing SiO_x, nitrides, sulfides, or carbides, and that particularly, ZnS-SiO₂ is preferable for the protective layer because it is an amorphous material and has a high refractive index (see page 6, para. [0062]). Thus, the protective layers of Nishihara I do not correspond to the low refractive index layer of claim 1, which has a lower refractive index. Accordingly, claim 1 is distinguished from Nishihara I.

Nishihara II has an effective prior art date as early as March 2003, which is an 18-month publication date from the September 12, 2001 filing date of the foreign priority document. The March 2003 publication date is later than the October 10, 2002 filing date of a priority application JP 2002-297291 of the present application (see a verified translation attached hereto), because the international application of Nishihara II (PCT/JP02/02099 published as WO 03/025922) was published in Japanese. Thus, Nishihara II and WO 03/025922, which is published on March 27, 2003, cannot be prior art against the present application.

In addition, Nishihara II discloses a transmittance adjusting layer (7), which is formed between a reflection layer (6) and an optical separation layer (9) (see Fig. 1), and fails to disclose the low refractive index layer formed between the transmittance adjusting layer and the optical separation layer as claim 1 requires.

Moreover, like Nishihara I, Nishihara II discloses protective layers, which include oxides, preferably, ZnS-SiO_2 , because ZnS-SiO_2 is an amorphous material and has a high refractive index unlike the low refractive index layer of claim 1, which has a lower refractive index (see page 5, para. [0049]).

Accordingly, claim 1 is distinguished from Nishihara I as evidenced by Nishihara II, and this rejection should be withdrawn.

Claims 1-7 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Nishihara et al. (International Patent Application Publication No. WO 03/025922) (Nishihara III) (of which Nishihara et al. (U.S. Patent Application Publication No. 2004/0105182) (Nishihara II) is used as a translation thereof). Applicants respectfully traverse this rejection.

Applicants respectfully note that the first listed inventor of WO 03/025922 in the form 892 attached to the Office Action mailed January 21, 2009 is Nishihara, T instead of Kojima, R.

As discussed above, Nishihara III has the effective prior art date as early as the March 2003 publication date of the foreign priority document or the March 27, 2003 international application publication date, both of which are later than the October 10, 2002 filing date of the foreign priority document of the present application JP 2002-297291 (see the verified translation attached hereto), and Nishihara III cannot be prior art against the present application.

Accordingly, this rejection should be withdrawn. Applicants do not concede the correctness of the rejection.

In view of the above, Applicants request reconsideration of the application in the form of a Notice of Allowance.

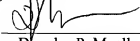


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DPM/my/ad

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